I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 18-31 (COR), "AN ACT TO *REPEAL AND REENACT* §67101.8 OF ARTICLE 1, CHAPTER 67 OF TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO FULFILLING THE MANDATE OF PUBLIC LAW 30-199 BY PROVIDING FOR THE ESTABLISHMENT OF THE GUAM BUILDING CODE COUNCIL",** was on the 4th day of April, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 7th day of April, 2011, at 09:50 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 18-31 (COR)

Introduced by: T. C. Ada
Adolpho B. Palacios, Sr.
Chris M. Duenas
V. Anthony Ada
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AN ACT TO *REPEAL AND REENACT* §67101.8 OF ARTICLE 1, CHAPTER 67 OF TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO FULFILLING THE MANDATE OF PUBLIC LAW 30-199 BY PROVIDING FOR THE ESTABLISHMENT OF THE GUAM BUILDING CODE COUNCIL.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslatura Guåhan* finds that Public Law 30-199, which updated Guam's building and fire codes, also called for a Task Force consisting of government of Guam and community stakeholders to spearhead the creation of a Guam Building Code Council. This

Council, once established, is mandated to review and initiate the process for adoption of future updates to such codes. The Council will also serve as an appeals board for disputes related to orders, decisions or determinations made by government of Guam entities relative to the application and interpretations of the Guam Building Code.

I Liheslaturan Guåhan further finds that the Task Force has met regularly since the passage of Public Law 30-199 on September 29, 2010, and included representation from the Department of Public Works, the Guam Fire Department, the Consolidated Commission on Utilities (including direct representation from the Guam Waterworks Authority), the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors, the Guam Chamber of Commerce, the Chinese Chamber of Commerce of Guam, the Guam Contractors License Board, the Guam Contractors Association, the Guam Society of Professional Land Surveyors, the Guam Society of Professional Engineers, the Guam and Micronesia Chapters of the American Institute of Architects, and the Guam Association of Realtors. The findings and recommendations of the Task Force were provided to the Legislative Committee on Transportation, Utilities, Public Works, and Veterans Affairs.

I Liheslaturan Guåhan finds that the Guam Building Code Council will serve a crucial role in reconciling disputes in the interpretation and application of the building and fire code, and in protecting the public welfare through sound code development and application.

I Liheslaturan Guåhan intends to use the findings and recommendations of the Task Force as a foundation for establishing the Guam Building Code Council and the process by which the Council *shall* develop its Rules and Regulations.

Section 2. § 67101.8 of Article 1, Chapter 67 of Title 21, Guam Code Annotated, is hereby *repealed and reenacted* to read:

"**§67101.8. Guam Building Code Council.**

(a) **Purpose**. In order to safeguard life, health, and property, and to promote the public welfare, the Guam Building Code Council *shall* serve a dual role as a Review Board for proposed updates and amendments to the Guam Building Code, and as an Appeals Board for disputes related to orders, decisions or determinations made by government of Guam entities relative to the application and interpretation of the Guam Building Code.

(b) **Definitions**. As used in this Chapter, *unless* otherwise indicated:

(1) *Appointed member* means a person who is appointed by *I Maga'lahen Guåhan* to hold a position on the Council. *Ex-officio members* are *not* included in the definition of *appointed member*.

(2) *Architect* means a person who is duly registered and licensed by the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors (PEALS) as an Architect.

(3) *Council* means the Guam Building Code Council.

(4) *Ex-officio member* means a person who holds a position on the Council reserved for the Director of the Department of Public Works or the Fire Chief of the Guam Fire Department.

(5) *Guam Building Code* means the codes adopted within Chapter 67, as well as the International Fire Code, and any subsequent amending legislation.

(6) *Licensed General Building Contractor* means a person who holds a current license as a General Building Contractor by the

Contractors License Board, as per Chapter 70 of Title 21, and engages primarily in the construction of buildings and infrastructure.

(7) *Licensed Real Estate Professional* means a real estate sales person, or broker, who is licensed on Guam.

(8) *Model Code* means the codes, as published by their respective nationally recognized organizations, which form the basis of the Guam Building Code.

(9) *Professional Engineer* means a person who has been duly registered and licensed by the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors (PEALS) as a Professional Engineer.

(10) *Registered Professional* means any person holding a current registration as a Professional Structural Engineer, Professional Mechanical Engineer, Professional Electrical Engineer, Professional Fire Protection Engineer, or Registered Architect.

(c) **Membership.** The Council *shall* be comprised of the following members whose duty *shall* be to administer the provisions of this Chapter.

(1) **Composition.** The Council *shall* consist of seven (7) appointed members and two (2) ex-officio members, for a total of nine (9) members. These nine (9) members *shall* consist of the following:

(A) one (1) Architect;

(B) one (1) Licensed General Building Contractor;

(C) one (1) Licensed Real Estate Professional;

(D) two (2) members of the general public who are *not* Registered Professionals, Licensed General Building Contractors, or Licensed Realtors, at least one (1) of whom *shall* be familiar with barrier free architecture and aware of, and sensitive to, the requirements necessary to ensure public buildings are accessible to, and usable by, persons with disabilities;

(E) one (1) Professional Engineer, licensed on Guam, specializing in structural engineering;

(F) one (1) Professional Engineer, licensed on Guam, specializing in either mechanical, electrical, or fire protection engineering;

(G) the Director of the Department of Public Works, to serve in an ex-officio capacity;

(i) the Director of the Department of Public Works may designate one (1) of the Department's Chief Engineers, Chief Building Inspector, or Building Permit Administrators to serve on the Council in place of him or herself; and

(H) the Chief of the Guam Fire Department, to serve in an ex-officio capacity;

(i) the Chief of the Guam Fire Department may designate a Senior Fire Prevention Officer to serve on the Council in place of him or herself.

(2) **Appointment, Confirmation, and Term Length.** *Except* for the representatives of the Department of Public Works and

the Guam Fire Department, each member of the Council *shall* be appointed by *I Maga'lahen Guåhan* and confirmed by *I Liheslaturan Guåhan* for a term of five (5) years, save for the length of terms associated with the initial creation of the Council as outlined in §67101.8(c)(2)(A).

(A) **Initial Term Lengths.** For initial appointments to the Council, membership term lengths *shall* be as such: of the two (2) appointed members representing the public, one (1) *shall* serve a term of one (1) year, and the other *shall* serve a term of three (3) years; the appointed Licensed General Building Contractor *shall* serve a term of three (3) years; the appointed Real Estate Professional *shall* serve a term of three (3) years; and of the three (3) appointed Registered Professionals, one (1) *shall* serve a term of one (1) year, and the remaining two (2) *shall* serve terms of five (5) years. Thereafter, all terms for appointed members *shall* be five (5) years in length. When appointing initial members to the Council, *I Maga'lahen Guåhan shall* specify the length of term for each individual appointment, with such term lengths being in accordance with the manner stipulated in this Subsection.

(B) **Appointee Categories.** Registered Professionals and Licensed General Building Contractors *shall* be appointed from a list as submitted by the local chapter of the American Institute of Architects (for Architects), the Guam Society of Professional Engineers (for Professional Engineers), or the Guam Contractors Association (for Licensed General Building

Contractors). The Council position for a Real Estate Professional *shall* be appointed from a list as submitted by the local chapter of the Guam Association of Realtors. Such submitted lists *shall* consist of at least two (2) names for the respective vacancy on the Council. *I Maga'lahen Guåhan* may, for any reason, request the submittal of a new list of names.

(i) **Failure to Provide List.** Failure of the professional organization to provide a list of names within thirty (30) days of that associated member's vacancy, or within thirty (30) days following receipt of written request from *I Maga'lahen Guåhan* for the submittal of a new list of names, the requirement to select from a submitted list *shall* be waived and *I Maga'lahen Guåhan* may nominate an individual who meets all other respective requirements set forth in this Section.

(ii) **Membership to Recommending Organization *Not* Required.** Individuals named on the list of potential nominees, as per this Subsection, need *not* be members of the respective recommending organization.

(d) **Eligibility Requirements for Members.** Each appointed member of the Council *shall* be a resident of Guam for the most recent two (2) years, or a resident of Guam for a cumulative total of five (5) years over the most recent ten (10) years. Council members

who are Registered Professionals *shall* have been in responsible control in the lawful practice of engineering or architecture for *at least* ten (10) years, and with *no* record of disciplinary action from any jurisdiction. Council members who are Licensed General Building Contractors *shall* have been licensed for *at least* five (5) years, with *no* record of disciplinary action from any jurisdiction. Council members who are Licensed Real Estate Professionals *shall* have been licensed for *at least* five (5) years, with *no* record of disciplinary action from any jurisdiction. Additionally, each licensed members' practice *shall* be principally located in Guam.

(e) **Status of License.** Members of the Council required to be licensed in their respective fields, as per this Section, must maintain good standing of their licenses with their respective licensing entity. Should a member fail to maintain good standing, the member will *not* be permitted to participate on the Council until such license is restored to good standing. A member *shall* be deemed disqualified to retain a seat on the Council in the event that the subject license is *not* restored to good standing within ninety (90) days, and *shall* be removed from the Council, thus creating a vacancy to be filled in accordance with §67101.8(i).

(f) **Removal of Members.** *I Maga'lahen Guåhan* may remove any sitting member on the Council for due cause, such as malfeasance in office, incapacity, or neglect of duty. The vacancy created by said removal *shall* then be filled in accordance with § 67101.8(i).

(g) **No Courtesy Resignations.** When there is a change of administration of the government of Guam after a gubernatorial

election, no courtesy resignation *shall* be requested by the new administration nor offered by any appointed member of the Council.

(h) **Reappointments.** On the expiration of the term of the appointed member, *I Maga'lahen Guåhan shall* appoint a successor as provided in this Chapter. An appointed member may be reappointed to the Council for *not* more than two (2) consecutive five (5) year terms. Each such member may hold office until the expiration of the term for which appointed or until a successor has been duly appointed and qualified.

(i) **Vacancies.** Vacancies in the membership of the Council *shall* be filled by appointment by *I Maga'lahen Guåhan* in the same manner as initial appointments, as provided in §67101.8(c) of this Chapter. The composition of the Council, i.e. membership categories, *shall* be maintained. Persons filling a vacancy must undergo the Legislative confirmation process, and shall serve for the unexpired portion of the term.

(1) **Failure to Appoint.** If *I Maga'lahen Guåhan* does *not* make an appointment within ninety (90) days after a Council vacancy occurs, the Council may appoint, by majority vote, a provisional member to serve in the interim until *I Maga'lahen Guåhan* makes an appointment and the nominee is confirmed by *I Liheslaturan Guåhan*. Such provisional member *shall* have all the powers and responsibilities of the position to which they are appointed by the Council, and *shall not* require confirmation by *I Liheslaturan Guåhan*.

(j) **Ex-Officio Members.** The Director of the Department of Public Works and the Fire Chief of the Guam Fire Department, or their respective designees, *shall* be members of the Council by virtue of their position. Additionally, such ex-officio members *shall* have all the same powers and duties as appointed members to the Council, including voting powers as described in this Chapter. *Ex-officio* members do *not* require confirmation by *I Liheslatura* to serve on the Council.

(k) **Oath.** Each confirmed member of the Council, inclusive of ex-officio members, *shall* be sworn into the Council and take an oath for the faithful discharge of the duties of the position.

(l) **Annual Budget Request.** The Guam Building Code Council *shall* transmit its annual operating budget requirements to the Guam Contractors License Board for inclusion in the latter's annual budget request. The Council's budget *shall* be primarily funded by the Contractors License Board Fund, Title 21, Chapter 70, §70119.

(m) **Compensation.** Council members may be compensated Fifty Dollars ($50.00) per official Council meeting, *not* to exceed One Hundred Dollars ($100.00) in any month, provided funds are available.

(n) **Initial Logistical Support.** The Guam Contractors License Board *shall* provide the Council logistical support, to include telecommunications, copiers, and administrative workspace. This Subsection *shall* be in effect until the Council has sufficiently established its administrative support base.

(o) **Independence of Council and Board.** Although the Guam Building Code Council and the Contractors License Board are funded from the same revenue source, the Council and the Board *shall* preserve their respective independence from one another.

(p) **Organization and Meetings.** The Council *shall* meet a minimum of once every three (3) months. A quorum for the Council to meet *shall* consist of five (5) members, one (1) of whom *shall* be an appointed Registered Professional under the provisions of this Chapter. Decisions *shall* carry with a majority vote of members present; however, decisions made in the Appeals Process *shall* carry in accordance with the voting requirements outlined in the Council's Rules and Regulation.

(1) **Election of Leadership.** The Chairperson, Vice-Chairperson, and Secretary *shall* be elected annually by majority vote of the Council members at the first regular meeting of the Council after January 1.

(2) **Duties of Chairperson.** The Chairperson *shall* call meetings of the Council, arrange meetings with interested members of the public who may seek assistance from the Council, assign duties to Council members, and provide leadership to the Council. In the absence, or at the request of, the Chairperson, any or all of these duties *shall* be performed by the Vice-Chairperson.

(3) **Duties of Secretary.** The Secretary *shall* keep charge of permanent records and proceedings of every meeting of the Council, and *shall* ensure that minutes of meetings are made available for review at subsequent meetings. The Secretary *shall* serve as

correspondent of the Council and as Treasurer of any funds in the custody of the Council.

(q) **Powers.** The Council *shall* have the power to:

(1) review, as deemed appropriate, proposed revisions, deletions, additions, or other modifications to the Guam Building Code, and forward its recommendations for such modifications to *I Liheslatura* for adoption;

(2) serve as a Board of Appeals for disputes related to orders, decisions or determinations made by the Building Official, Code Official or Fire Code Official relative to the application and interpretations of the Guam Building Code;

(3) formulate, adopt and amend all Rules and Regulations governing the conduct of the Council's affairs, inclusive of the powers set forth in (1) and (2) of this Subsection (q)(Powers). The adoption and amendment of such Rules and Regulations *shall* be in accordance with the provisions of the Administrative Adjudication Law; and

(4) contract for the services of legal counsel when deemed necessary. The Guam Attorney General may also provide legal counsel to the Council to provide members with general legal advice concerning matters before them for consideration. The Council *shall* retain and exercise all administrative and civil rights and remedies commonly available to agencies in the jurisdiction. *No* action or other legal proceedings for damages *shall* be instituted against the Council, or against any Council member or employee or agent of the Council, for any act done in good faith and in the intended

performance of any power granted under this Chapter, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

(r) **Development of Rules and Regulations.** The Council *shall* develop its Rules and Regulations to guide it in fulfilling its purpose as stated in §67101.8(a)."

Section 3. Severability. *If* any of the provisions of this law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this law which can be given effect without the invalid provisions or application, and to this end the provisions of this law are severable.

Section 4. Effective Date. This Act *shall* become effective upon enactment.